

### REMARKS

In an Office Action dated March 13, 2003 in the prior application, then-pending claims <sup>1-34</sup>~~1-32~~ were finally rejected. New claims <sup>35-55</sup>~~33-53~~ submitted above are believed to be patentable over the references cited in that Office Action, for the reasons generally described below.

Applicants appreciate the Examiner's consideration and remarks in the Interview of April 8, 2003, as reflected in the Examiner's summary dated April 14, 2003.

#### **Mollica (U.S. Patent No. 5,360,209)**

This patent describes a batting training device including an elongated handle and a longitudinally movable weighted member for providing a *visual* indication of the correctness of the batter's swing. In the noted prior Office Action, the Examiner acknowledged that the Mollica patent is silent on the subject of buffers affixed to the slide, but argued that this feature is well known in the sports training art, and that "there is nothing unobvious about providing a buffer at either end of the slide in order to protect the hand from being pinched and to provide a means for absorbing some of the impact."

First, it is requested that the Examiner provide support in the art for the alleged obviousness of providing a buffer at *both* ends of the slide. Second, it is noted that Mollica does not teach or suggest a graspable slide sized to accommodate all of the fingers of a user's hand movable between first and second shaft ends, as recited in claim 33. It also fails to teach or suggest means for striking the head to produce an audible signal. Rather, Mollica describes a device gripped with both hands on a single fixed grip and a weighted slide designed to emulate the appearance and feel of an actual bat and to produce only a visual signal. Finally, Mollica's failure to teach or suggest buffers and stops is not surprising because the stops and buffers of applicants' training device would be superfluous in the Mollica device.

#### **Kallassy (WO 99/26705)**

In the previous Office Action and in an Interview Summary dated April 8, 2003, the Examiner argued that Kallassy describes a swing trainer and process for using the training device in golf that can be "altered" for use in baseball. Kallassy, however, is directed to producing a repeatable golf swing, which is not the object of the present invention. In golf,

the ball is stationary (“static”) and the best results are achieved by addressing the stationary ball in identical, repeatable swings. Also, in achieving this repeatable swing, Kallassy describes a method in which the hands separate progressively during the backswing and come back during the downswing prior to the point of impact. In the method of the present invention, the hands begin in a stationary separated position. In baseball, the ball is moving (“dynamic”) at greatly varying speeds which can run up to 100 mph or more in major league play and must be met in different ways and at different locations in space depending on how it is approaching the batter. Thus, the objective of the method of the present invention is to teach proper hand placement and body movement as well as optimal acceleration and techniques for producing maximum power in hitting a dynamic, not a static ball. There is thus an essential timing aspect of the method of the present invention which is completely absent in the teaching of Kallassy.

Thus, for example, in the technique taught in the Kallassy publication, the user’s left arm is held substantially straight at all times. This is completely at odds with the technique sought to be taught by the method of the present invention, where the user’s arms are bent at all times, to provide an opportunity to adjust the bat movement to meet the dynamic ball.

With respect to the article claims 33-49, it is noted that this reference fails to teach or suggest (a) a system for teaching a person the proper way to swing a baseball bat to meet a dynamic ball, (b) a graspable slide sized to accommodate all of the fingers of a user’s hand, (c) means for striking the head to produce an audible signal, (d) first and second buffers on a graspable slide, (e) a hollow shaft with a weighted member secured within the shaft (claims 35 and 36), (f) a system including interchangeable heads of differing weights (claims 38-40), or (g) a system in which the handle is covered with a leather wrap, foam grip or other suitable material and the slide is covered with a leather wrap, foam grip or other suitable material to match the covering of the handle (claim 41).

Finally, it is noted that method claim 50 is directed to a *two-step method* for training a person to swing a baseball bat of the described design. In the first step, the person grips the handle of the device with one hand and the slide with the fingers of the other hand wrapped around the slide in a batting grip while both elbows are bent, repeatedly swinging the trainer and simultaneously axially sliding the slide handle from a first position where it is adjacent to the second end of the shaft to a second position where the handle is adjacent the stop. In the second step, the person tests his/her training progress by placing the slide in its position

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closest to the handle, gripping in a manner similar to a conventional bat with both hands on the handle, and swinging the device as if it were a conventional bat. The slide will move up the handle during the swing and strike the head, audibly informing the user of the results of his or her training efforts. Kallassy neither teaches nor suggests such a two-step a method.

**Bartkowicz (U.S. Patent No. 5,011,145)**

The Examiner argued that this reference shows a lower hand grip 11 acting as a stop and buffers or flanges (17, 18) attached to either end of a second handle (16). Bartkowicz, however, is a fixed device, lacking, *inter alia*, a movable slide.

**Bratt (U.S. Patent No. 3,955,816)**

The Examiner argued that the concept of interchangeable weighted members affixed to the end of the shaft would be obvious over Kallassy in view of Bratt (U.S. Patent No. 3,955,816). Bratt, however, describes only a practice bat with a chamber for receiving a granular material (*i.e.*, sand). There is no teaching or suggestion in this reference of a system of interchangeable heads of varying weights (claims 38-40) or of interchangeable internal rods of varying weights and lengths.

**Conclusion**

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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